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IN ASSOCIATION WITH BRYAN CAVE,
A MULTINATIONAL PARTNERSHIP.
LONDON, ENGLAND

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December 6, 2001

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Executive Director
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Richard P. Narcia
Lt. Governor
Gila River Indian Community
Post Office Box 97
Sacaton, Arizona 85247

Wayne Taylor, Jr.
Chairman
Hopi Tribe
Post Office Box 123
Kykotsmovi, Arizona 86039

Charles Wheeler
Vice President Western Cultural Resource
Management, Inc.
2603 West Main Street, Suite B
Farmington, New Mexico 87401

Re: Programmatic Agreement among the EPA, the Arizona State Historic Preservation Officer, the Advisory Council on Historic Preservation Regarding the Magma Florence In Situ Copper Mine Project

Dear Sirs:

On July 26, 2001, BHP Copper Inc. ("BHP") notified you regarding a corporate transaction relevant to the above-referenced Programmatic Agreement ("PA"), which is attached for your reference.

This letter confirms that on December 5, 2001, BHP's Florence Division transferred its assets and liabilities to Florence Copper Inc., a wholly owned subsidiary of BHP. Concurrent with the transfer, BHP sold 100% of its stock in Florence Copper Inc. to Merrill Mining, L.L.C. ("Merrill"). As demonstrated by the attached agreement, Florence Copper Inc., a wholly-owned subsidiary of Merrill, assumed responsibility for complying with the PA from the date of closing, December 5, 2001 forward.

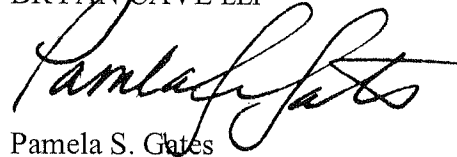
December 6, 2001

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Should you have any questions or require further information, please call Mr. John Kline at (520) 385-3246 or Mr. Harrison Merrill at (404) 495-9577.

Very truly yours,

BRYAN CAVE LLP

A handwritten signature in black ink, appearing to read "Pamela S. Gates", written over the typed name.

Pamela S. Gates

PSG/jmd

Enclosures

cc: John Kline
Adrain Taylor
Jeff Lantz, Esq.
W. Harrison Merrill
David Ramras, Esq.

106 after
August 30, 1995

PROGRAMMATIC AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE ARIZONA STATE HISTORIC PRESERVATION OFFICER,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING

THE MAGMA FLORENCE IN SITU COPPER MINE PROJECT

WHEREAS, Magma Copper Company ("Magma") proposes to develop and operate the Florence In Situ Copper Mine Project ("Florence Project"), which will include underground injection wells near Florence, Arizona; and

WHEREAS, Magma will apply for a permit or permits from the Environmental Protection Agency ("EPA") to construct underground injection wells in accordance with 40 C.F.R. Parts 144 and 146, the granting of which permit(s) constitutes a Federal Undertaking pursuant to 16 U.S.C. § 470w; and

WHEREAS, the EPA has determined that the construction of underground injection wells may have an effect on historic properties, *i.e.*, properties included in or eligible for inclusion in the National Register of Historic Places ("National Register"), and has consulted with the Arizona State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("Council"), pursuant to the regulations in 36 C.F.R. Part 800 implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.* ("Section 106"); and

WHEREAS, development of underground injection wells for the Florence Project will take place in phases over several years; and

WHEREAS, Magma has participated in the consultation and has been invited to concur in this Programmatic Agreement ("Agreement"); and

WHEREAS, representatives of the Ak Chin Indian Community, the Gila River Indian Community, the Salt River Indian Community, and the Tohono O'odham Nation have been offered the opportunity to participate in the consultation and to concur in this Agreement, and said Native American Tribes have designated the Gila River Indian Community as their representative for purposes of such consultation and concurrence; and

WHEREAS, representatives of the Hopi Tribe have been offered the opportunity to participate in the consultation and to concur in this Agreement; and

WHEREAS, the public has been informed and afforded opportunity for involvement in the development of the elements underlying this Agreement;

NOW, THEREFORE, the signatories to this Agreement agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties and to satisfy all Section 106 responsibilities for all individual aspects of the Undertaking.

STIPULATIONS

The EPA shall ensure the following measures are carried out.

I. APPLICABILITY OF AGREEMENT

A. The purpose of this Agreement is to establish an understanding among the EPA, the SHPO, the Council, and Magma as to how the consultation process under Section 106 will be implemented with regard to the Undertaking.

B. This Agreement applies to all Magma activities involving the EPA Undertaking, which will consist of granting underground injection well permit(s) to wells for purposes of in situ copper mining. The area of potential effects of the Undertaking shall be defined as the Magma Florence Mine Cultural Resources Review Area ("MFMCR") as described in Appendix A. The parties agree that Figure 1 may be amended from time to time as may be necessary to include additional areas not currently identified as within the area of potential effects. Should it become necessary for Magma to request an expansion or amendment to the permit area, the EPA shall notify the other parties to this agreement of such request prior to EPA approval.

C. Magma proposes to conduct mineral mining and related activities pursuant to such permit. The construction of in situ mining wells and related ground-disturbing activities is expected to occur in phases. While an initial inventory of cultural resources has been conducted for the entire MFMCR, subsequent selection and implementation of treatment plans may occur in phases.

II. HISTORIC PROPERTY IDENTIFICATION AND EVALUATION OF POTENTIAL EFFECTS

A. The EPA has determined that Magma, in consultation with the SHPO and Native American Tribes, has completed a historic properties inventory of the MFMCR. This inventory included (i) inquiries regarding any traditional cultural properties within the MFMCR and (ii) a field survey of the MFMCR conducted by qualified archaeologists. Based on the field survey, the EPA has reason to believe that the MFMCR includes cultural properties that are eligible for inclusion in the National Register.

B. For the purposes of the above inventory and any subsequent archeological surveys, the EPA, in consultation with the SHPO, shall ensure that (i) determinations of eligibility for inclusion in the National Register are made for any cultural properties, according to 36 C.F.R. § 60.4 and 36 C.F.R. § 800.4(c) and (ii) the effects of the Undertaking on all historic properties are assessed according to 36 C.F.R. §§ 800.5 and 800.9.

1. The EPA shall submit to the SHPO for concurrence EPA's determinations of eligibility of cultural properties for inclusion in the National Register and of effects of the Undertaking on any historic properties. The SHPO shall respond to EPA's determinations within thirty days of receipt.

2. If the EPA and the SHPO cannot reach agreement on the eligibility of any cultural property, EPA shall obtain a determination from the Keeper of the National Register. The Keeper's determination shall be final. Magma shall be kept informed in a timely manner of the progress of the request for a determination.

C. If the EPA and the SHPO agree that at a particular area of the MFMCRRA (i) no historic properties are found or (ii) there will be no effect on any historic properties, the EPA shall provide clearance to proceed with activities in that area, subject to issuance of a permit under 40 C.F.R. Parts 144 and 146 and to the monitoring provisions of the Treatment Plan (see Stipulation III.D.5).

D. Any disputes between the EPA and the SHPO concerning whether there will be adverse effects on historic properties shall be resolved in accordance with the procedures in 36 C.F.R. § 800.5 and, in the event 36 C.F.R. § 800.5 is inapplicable, with Stipulation VI.

III. PREPARATION OF A TREATMENT PLAN

A. The EPA, in cooperation with the other parties to this Agreement, shall ensure that Magma develops and implements an overall treatment plan ("Umbrella Treatment Plan") for the mitigation of anticipated effects on historic properties that will result from the construction and operation of the underground injection control wells and any related uses and activities.

B. In the event that Magma plans to construct in situ wells sequentially, Magma shall have the option of developing, in addition to the Umbrella Treatment Plan, location and property specific Data Recovery Plans for individual phases, geographic areas, or, if necessary, archeological sites for development. Such data recovery plans will be considered Supplements to the Treatment Plan ("Supplemental Data Recovery Plans").

C. The Treatment Plan and any Supplemental Data Recovery Plans shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 Fed.Reg. 44716-44742) and the Council's handbook Treatment of Archeological Properties. A Treatment Plan shall specify, at a minimum:

1. The historic properties to be affected by the project as a whole and the nature of those effects;

2. A Research Design that will contain the research questions and goals that are applicable to the Project area as a whole and that will be addressed through data recovery, along with an explanation of their relevance and importance;

3. Fieldwork and analytical methods and strategies applicable to the Project area as a whole, along with an explanation of their relevance to the research questions. Such treatment methods will be developed for each type of historic property identified that may be affected by the Florence Project;

4. Proposed procedures for dealing with discovery situations;

5. Methods to be used in data management and dissemination of data;

6. Methods and procedures for the recovery, analysis, treatment, and disposition of human remains, associated grave goods, and objects of cultural patrimony that reflect any concerns and/or conditions identified as a result of consultations between the EPA and affected Native American groups; and

7. The proposed disposition of recovered materials and records.

D. Where data recovery is determined by the EPA and SHPO to be the preferred treatment option for an eligible property or properties, the Treatment Plan or Supplemental Data Recovery Plan shall specify, at a minimum:

1. The historic properties to be affected by the specified phase of the Project and the nature of those effects;

2. The research questions identified in the Treatment Plan that will be appropriate for the specified Project segment and that will be addressed through data recovery, along with any additional research questions compatible with the Treatment Plan and an explanation of their relevance to the overall research goals as established in the Treatment Plan;

3. The specified fieldwork and analytic strategies identified in the Treatment Plan, as well as any other strategies that will be employed in the specific Project segment;

4. A proposed schedule for the submission of progress, summary, and any other reports to the SHPO;

5. Provisions for monitoring, including quarterly monitoring reports to be submitted by Magma to the EPA and SHPO; and

6. Qualifications of consultants employed to undertake the implementation of data recovery.

E. The Treatment Plan shall include provisions for monitoring, including quarterly monitoring reports to be submitted by Magma to the EPA and the SHPO.

F. If Magma encounters human remains, funerary objects, or cultural items as defined in the Arizona Revised Statutes 41-865, the EPA, in consultation with the Arizona State Museum, shall ensure that they are treated according to (i) the applicable State law and (ii) the Burial Consultation Agreement, A.R.S. § 41-865, Case No. 94-24. If objections are raised regarding the treatment of such human remains, funerary objects, or cultural items as defined by the applicable statute, the EPA shall engage in consultation in accordance with Stipulation VI to resolve the objections.

IV. REVIEW AND APPROVAL OF THE TREATMENT PLAN AND DATA RECOVERY PLAN(S)

A. The EPA shall ensure that Magma submits a proposed Treatment Plan and any Supplemental Data Recovery Plans to the SHPO, the Gila River Indian Community, the Hopi Tribe, and the Council for a concurrent thirty day review and comment period ("reviewing parties"). The term "day" shall mean a calendar day throughout this Agreement. Magma may elect to submit for simultaneous review a Treatment Plan and Supplemental Data Recovery Plan(s) applicable to a given phase, geographic area, or, if necessary, archeological site. If any reviewing party fails to submit comments within thirty days of receipt of the proposed Treatment Plan and any Supplemental Data Recovery Plans, the EPA shall assume that party's concurrence.

B. If any reviewing party objects to the Treatment Plan and any Supplemental Data Recovery Plans, it shall notify the EPA and the SHPO within the thirty day review period. The objection must be specifically identified and the reasons for the objection documented. The EPA, the SHPO, and the objecting party shall engage in consultation to resolve the objection. If the objection cannot be resolved, the EPA shall consult with the Council in accordance with Stipulation VI.

C. The EPA will apprise Magma as to the status of the consultation process. Upon completion of the review and comment process, consideration by the EPA of any SHPO, the Gila River Indian Community, the Hopi Tribe, or Council comments, and any subsequent revisions in the Treatment Plan and any Supplemental Data Recovery Plans, the EPA shall provide clearance to Magma to proceed with implementation of the Treatment Plan and any Supplemental Data Recovery Plans.

D. Subject to the requirements of 40 C.F.R. Parts 144 and 146, Magma shall have from EPA clearance to begin construction of wells and related activities in those portions of the MFMCRA that contain historic properties when (i) the applicable treatment specified in the approved Treatment Plan and any Supplemental Data Recovery Plans is completed for the area where construction and related activities are to occur, (ii) Magma has notified the EPA and the SHPO of such completion, and (iii) the SHPO has had fifteen days from receipt to review a preliminary field report.

E. Any proposed substantial alterations to the Treatment Plan and any Supplemental Data Recovery Plan shall require the written approval of the EPA and the SHPO. The EPA will coordinate the review and approval of such alterations in accordance with the procedure set forth in subsections A-D above of this Stipulation.

V. CHANGES IN INJECTION WELL CONSTRUCTION AREA

A. If Magma decides to construct injection wells in previously unidentified areas, the EPA shall ensure that, with respect to any area of potential effects not previously inventoried, Magma conducts an inventory in a manner consistent with the prior project area survey and the standards identified in Stipulation II. Magma shall submit a report of the results to the EPA. The EPA shall submit the report with any EPA comments to the SHPO for review and comment. Where historic properties may be affected within such previously unidentified injection well area, and where expedited review is desirable, Magma may submit the survey report and a specific data recovery plan for potential historic properties to the EPA for simultaneous review of inventory results, determinations of eligibility, and treatment measures. The data recovery plan for historic properties within the previously unidentified area shall be consistent with the project Treatment Plan and, once accepted, will be considered a supplement to the project-wide Treatment Plan.

B. The reviewing parties shall have thirty calendar days after receipt to review the documents, the determinations of eligibility, and the Supplemental Data Recovery Plan and provide, in the case of the SHPO, written comments to the EPA. If the SHPO fails to submit comments within thirty calendar days, the EPA shall assume the SHPO's concurrence with the recommendations for eligibility and treatment. If the reviewing parties agree on the recommendations for eligibility and treatment, the EPA shall provide Magma with notification to proceed with the Supplemental Data Recovery Plan. If any of the reviewing parties objects to any element of the documentation, the EPA shall attempt to resolve the objection in accordance with Stipulation VI.

C. Where no historic properties will be affected within a previously unidentified area, Magma shall submit the survey report to the EPA. The EPA shall submit the survey and any EPA comments to the SHPO for review of the inventory results. The SHPO shall provide comments to the EPA on the adequacy of the document(s) within thirty days of receipt. If the SHPO fails to comment within thirty days, the EPA shall assume concurrence. If the EPA and the SHPO agree to the adequacy of the documentation, Magma shall be authorized

to proceed with construction or use of the previously unidentified area, subject to any requirements of 40 C.F.R. Parts 144 and 146. If any of the reviewing parties objects to any element of the documentation, the EPA shall attempt to resolve the objection in accordance with Stipulation VI.

VI. DISPUTE RESOLUTION

A. Unless otherwise specified in this Agreement, should any party to this Agreement object within thirty calendar days to any action pursuant to this Agreement, the EPA shall consult with the objecting party to resolve the objection. If the EPA determines that the objection cannot be resolved, the EPA shall forward to the Council all documentation relevant to the dispute. Within thirty calendar days after the receipt of all pertinent documentation, the Council shall either:

1. Provide the EPA with recommendations, which the EPA shall take into account in reaching a final decision regarding the subject of the dispute; or

2. Notify the EPA that it will comment within an additional thirty calendar days in accordance with 36 C.F.R. § 800.6(b). Any Council comments provided in response to such an objection shall be taken into account by the EPA in accordance with 36 C.F.R. § 800.6(c)(2), with reference to the subject of the dispute.

B. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The responsibility of the EPA to carry out all actions under this Agreement that are not the subject of the dispute shall remain unchanged.

C. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of interpretation be raised by a member of the public, the EPA shall take the objection into account and consult, as needed, with the objecting party, SHPO, or the Council to resolve the objection.

VII. AMENDMENT

Any party to the Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accordance with 36 C.F.R. § 800.13.

VIII. TERMINATION

Any party to this Agreement may terminate it by providing thirty days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will comply with 36 C.F.R. §§ 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IX. EXECUTION

A. Execution and implementation of this Agreement evidences that the EPA has afforded the Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties and that the EPA has satisfied Section 106 responsibilities for all individual actions of this specific Undertaking.

B. In the event that the terms of this Agreement are not carried out, the EPA shall comply with 36 C.F.R. §§ 800.4 through 800.6, with regard to individual actions covered by this Agreement.

C. This Agreement shall become effective on the date of the last signature below and shall remain effective, unless earlier terminated as provided in Stipulation VIII until the complete development of the Florence Project.

ENVIRONMENTAL PROTECTION AGENCY

By: Karen Strauss Date: 9/20/95
Karen Strauss
Title: Acting Division Director, Water Management Division

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Richard L. Buel Date: 1-14-96
Richard L. Buel
Title: Executive Director

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: James W. Gammie Date: 9/25/95
James W. Gammie
Title: ASHPRO

CONCURRING PARTIES:

MAGMA COPPER COMPANY

By: _____ Date: _____
Title: _____

IX. EXECUTION

A. Execution and implementation of this Agreement evidences that the EPA has afforded the Council a reasonable opportunity to comment on the Undertaking and its effects on historic properties and that the EPA has satisfied Section 106 responsibilities for all individual actions of this specific Undertaking.

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ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

Title: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Title: _____

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Title: _____

CONCURRING PARTIES:

MAGMA COPPER COMPANY

By: John J. Kline Date: Sept. 7, 1995

Title: ENVIRONMENTAL PROJECT MANAGER

GILA RIVER INDIAN COMMUNITY

By: Cecil F. Cohen

Date: January 29, 1996

Title: lt. governor

HOPI TRIBE

By: _____ Date: _____

Title: _____

APPENDIX A

Magma Florence Mine Cultural Resource Review Area

The Magma Florence Mine Cultural Resources Review Area (MFMCRRA) shall consist of all property within the boundaries depicted on the attached Figure 1. The parties agree that Figure 1 may be amended from time to time as may be necessary to include any additional property where Magma intends to place underground injection control wells to be permitted by the EPA.

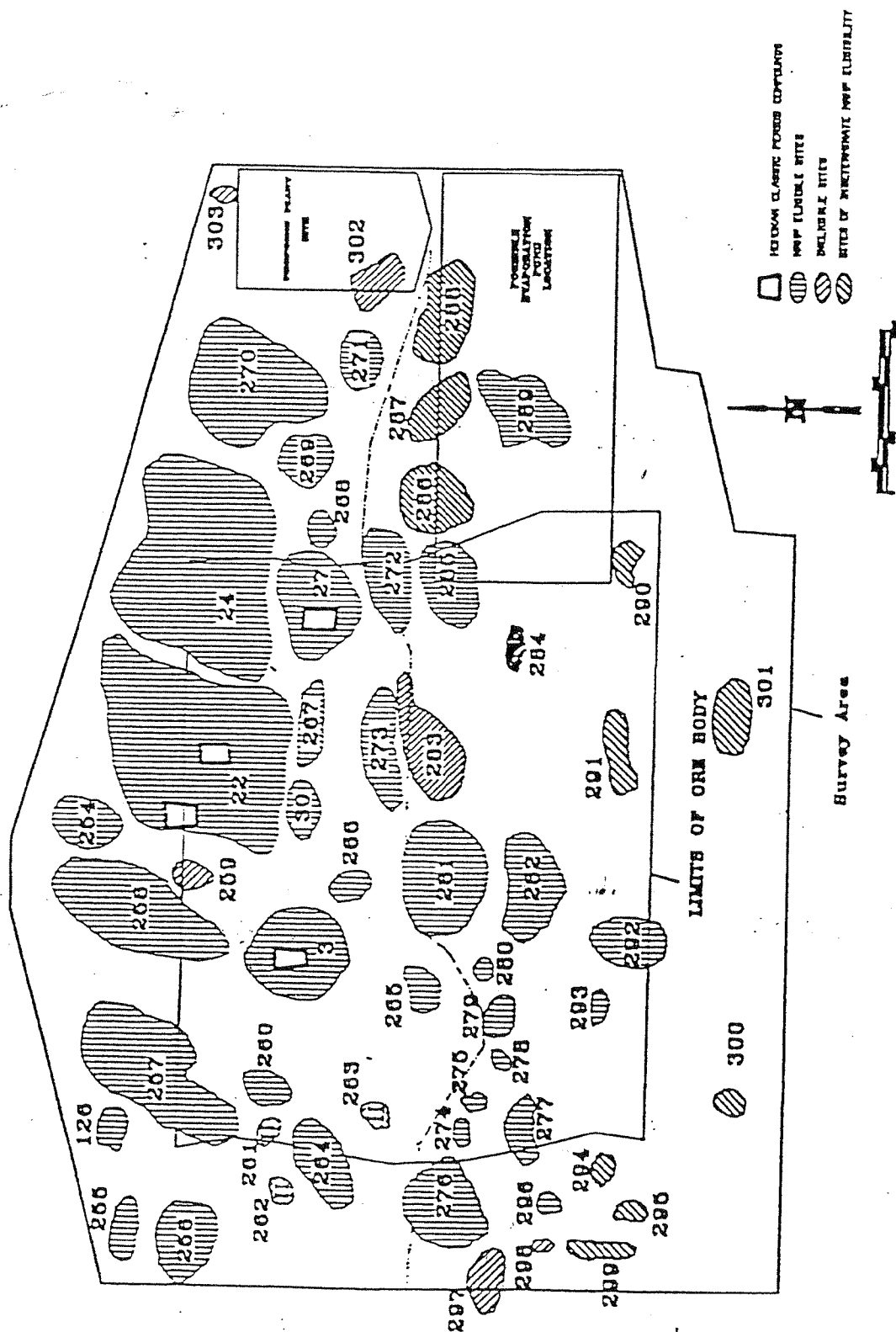
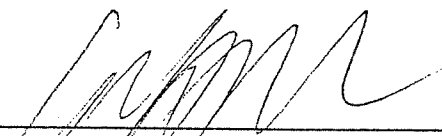


Figure 1. Distribution of archaeological sites in the Magma Florence project area.

AGREEMENT

On August 30, 2001, Florence Copper Inc. hereby agrees to assume Magma Copper Company's responsibility under the Programmatic Agreement, which Agreement is currently by and between Environmental Protection Agency, the Arizona State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Gila River Indian Community, and the Hopi Tribe. This Agreement is signed in contemplation of the closure of a stock purchase of Florence Copper Inc. by Merrill Mining, L.L.C. If the stock purchase is not effectuated on or before August 30, 2001, BHP Copper Inc. will remain responsible for complying with the conditions of the Programmatic Agreement until the pending stock purchase agreement between BHP Copper Inc. and Merrill Mining, L.L.C. is fully executed and closed.

Dated: 7/25, 2001

By 
W. Harrison Merrill, President
Merrill Mining, L.L.C. on
behalf of Florence Copper Inc.